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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-204455

DATE: January 6, 1982

MATTER OF: Vanguard Industrial Corporation

DIGEST:

1. A bid is nonresponsive where it is not clear on the face of the bid that the price on one aspect of the first article requirement (the unit itself) includes a price for the three remaining aspects of the requirement (test plan, testing, and test report), which the firm failed to bid as required by the invitation.
2. Where the only evidence as to whether a contracting official advised the protester to prepare its bid in a manner that ultimately caused the bid's rejection as nonresponsive is conflicting statements by the protester and contracting officials, the protester has not met the burden to prove its case.

Vanguard Industrial Corporation protests the rejection of its bid as nonresponsive under invitation for bids (IFB) DAAB07-81-B-1088, issued by the Department of the Army for night vision sight cases. The bid was rejected because Vanguard did not enter a price in the bid for a first article test plan, first article testing and a test report, as required by the IFB. Vanguard protests that simply by inserting a price to furnish the first article itself and signing the bid, the firm committed itself to all first article-related requirements. Vanguard also complains that it did not price the test plan, testing and test report according to instructions from contracting officials given in a series of telephone calls initiated by Vanguard.

We deny the protest.

Section B.1 of the IFB, "Information to Bidders/ Offerors," explained that the pricing schedule consisted of two general categories; contract line items (CLIN) and associated "alpha suffix" subline items (SLIN). For example, where the CLIN read "0001," the SLIN read "0001AA." Bidders were advised that a CLIN was intended only for the accumulation of management data for the Government, and that bid prices were to be entered only at the SLIN levels. Each SLIN consisted of 16 blocks setting out, among other things, item number (block 4), unit price (block 7), total item amount (block 8), item name (block 15), and descriptive data associated with the particular item or SLIN (block 15).

Section B.2 of the IFB cautioned:

"NOTICE: UNIT/TOTAL ITEM AMOUNT BLOCKS (BLOCKS 7 AND 8) * * *

"a. Except as stated in (b) below, in all SLINS Blocks 7 and 8 must be completed with either 'N' (Not Applicable) or 'NSP' (Not Separately Priced), or a price. When 'N' or 'NSP' is placed in Block 7 by either the Government or the offeror, Block 8 must still be completed. DO NOT LEAVE BLOCK 7 OR 8 BLANK UNDER ANY CIRCUMSTANCES. Failure to follow this instruction will render the bid nonresponsive.

"b. Further, if the solicitation/contract includes both First Article and Progress Payments provisions [which this IFB does], the offeror is required to complete WITH A PRICE those blocks 7 and/or 8 for First Article SLINS which have been left blank in the solicitation. If the offeror inserts 'N' or 'NSP' in such blocks, no progress payments will be made until First Article approval has been obtained (see the provision in Section II - Special Provisions - entitled 'Limitation of Progress Payments')."

Finally, section M.31 warned that a firm must bid on all items to be eligible for award, and that award would be based on the low total bid. (If the Army decided to

waive the first article requirement for a particular bidder, the bid would be evaluated without the first article-related line item prices.)

CLIN 0001 and its associated SLIN 0001AA (hereafter 1AA) stated the Army's requirement for 133 sight cases. CLIN 0002 stated the Army's first article requirement. The four associated SLINs had the following block 15 name designations: "1ST ARTICLE" (2AA), "TEST PLAN" (2AB), "TESTING" (2AC) and "TEST REPORT" (2AD). Each had a notation in block 19 reminding the bidder of the progress payment limitations of the IFB.

Vanguard properly entered its price for each of the 133 sight cases in block 7 of SLIN 1AA (\$714), and its extended total price in block 8 (\$94,962). The firm also entered \$714 (the same unit price as 1AA) as the total item amount (block 8) for SLIN 2AA, "1ST ARTICLE." Vanguard, however, made no entries in SLINs 2AB, 2AC and 2AD, and the Army therefore rejected the bid as nonresponsive. In this respect, it is not disputed that Vanguard would be subject to the first article requirement.

The issue then is whether or not Vanguard's bid legally obligated the firm to do more for the bid price than provide a first article unit to the Government for testing. If Vanguard's bid obligated the firm to perform the contract as specified in the solicitation, e.g., furnish the test plan, perform the testing and provide a test report in addition to providing the first article unit itself, the bid is responsive, notwithstanding a deviation in form, since the bid would have to be considered an unequivocal offer to perform the material requirements of the contract without exception. Vanguard asserts that by signing the bid and by completing block 8 of SLIN 2AA, Vanguard committed itself to all first article-related requirements: the first article itself (SLIN 2AA), a first article test plan (2AB), testing services (2AC), and a test report (2AD). We do not, however, agree with Vanguard's legal conclusion.

We considered an almost identical situation in Air-A-Plane Corporation, B-200724, April 27, 1981, 81-1 CPD 324. The Army invitation there had all the same first article and bidding provisions as does the instant one, with CLIN 0004 stating the first article requirements, and SLIN 4AA designated for the first article; 4AB the test; and

4AC the test report (no test plan was required). The protester only entered a price in block 8 of SLIN 4AA and was rejected as nonresponsive. In responding to the protester's argument that the 4AA entry committed it to perform the total first article requirement, we noted the Army's opinion that the 4AA entry could not reasonably be construed to include the testing (performed by the contractor) and report on the first article in addition to the first article unit itself, which was the only subject of SLIN 4AA. We agreed with the Army that there simply was not sufficient information in the bid to conclude that prices for testing and a report were included in the price quoted for the first article unit. As a result, we stated that the bid did not provide enough information as to the total price of the first article requirement to justify waiving. In effect, the failure to price the testing and report.

This case comes directly within the Air-A-Plane rationale. Here, as in Air-A-Plane, we cannot conclude that the Government's acceptance of a bid that priced only the first article unit itself would legally obligate the contractor to furnish a first article test plan, perform the first article testing, and furnish a test report all for the price of the first article unit. There is nothing else in the bid or in any material accompanying the bid which expresses a clear and unequivocal agreement to do more than furnish the first article item. Since the Government cannot tell from Vanguard's bid as submitted what the full bid price is to meet those contract requirements, the bid must be rejected as nonresponsive.

Vanguard states that in responding to the IFB it was confused as to how to price the CLIN 0002 items, and telephoned the contracting activity a number of times on the matter. Vanguard complains that it was instructed by an unidentified individual to leave SLINs 2AB, 2AC and 2AD blank. As evidence, Vanguard has furnished a copy of its telephone bill, which shows that the firm made a series of telephone calls to the activity.

In response, the Army admits to receiving telephone calls from Vanguard. The Army states, however, that the contracting personnel have been questioned, and that all deny having instructed Vanguard on how to complete the bidding schedule.

The protester has the burden to prove its case, Del Rio Flying Service, Inc., B-197448, August 6, 1980, 80-2 CPD 92. Vanguard's evidence only establishes that telephone calls were made, not their substance. The only evidence on whether Vanguard was instructed to prepare the bid as it did are conflicting statements by Vanguard and the Army. In such case, the protester's burden to prove its allegation is not met, Arsco International, B-202607, July 17, 1981, 81-2 CPD 46.

Notwithstanding the above, we are concerned that the Army, in designing a bidding form also intended as a data collection document, has established a bidding procedure that may unnecessarily trap an unwary bidder such as Vanguard into submitting a nonresponsive bid. Thus, we believe that the Army should solicit a single bid price for all the first article-related requirements. Alternatively, if the Army insists that a first article CLIN and the various associated SLINs are necessary management tools, a clause should be included in the solicitation to the effect that if only the SLIN for the first article unit is priced, the contractor nonetheless will be committed to the related requirements at no additional cost to the Government. We are relaying our concern and recommendation to the Secretary of the Army.

The protest is denied.

Harry D. Van Cleave
For the Comptroller General
of the United States